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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957

No. 855

HARLAN BLACKBURN,

Petitioner,

vs.

NATHAN MAYO, as Custodian of the State Prison, State of Florida,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For The Fifth Circuit

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IN THE

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No. ____

HARLAN BLACKBURN,

Petitioner,

vs.

NATHAN MAYO, as Custodian of the State Prison, State of Florida,

Respondent.

PETITION FOR A WRIT OF CERTIORARI To The United States Court of Appeals For The Fifth Circuit

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled cause on December 30, 1957.

CITATIONS TO OPINIONS BELOW

The U. S. District Court in and for the Southern District of Florida, Jacksonville Division, rendered no opinion in this cause. Its Final Judgment appears in the printed

transcript of record, nine copies of which are submitted herewith, at pages 23-24. The opinion of the United States Court of Appeals, Fifth Circuit, printed in Appendix A hereto, infra, p. 1-8, is reported at 250 F. 2d 645. The state trial court rendered no opinion. The opinion of the Supreme Court of Florida in the initial appeal to that Court of the matters involved in this habeas corpus case is reported at 83 So. 2d 694 (1955) (Appendix B). Certiorari to the Supreme Court of the State of Florida was denied by this Court in 350 U.S. 987 (1956).

JURISDICTION

The judgment of the United States Court of Appeals, Fifth Circuit, was entered on December 30, 1957, (R. 40; p. 8, Appendix A, infra). The timely petition for re-hearing was filed January 18, 1958, (R. 48). Re-hearing was denied January 29, 1958 (R. 52). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

1. Whether a conviction based on an information charging several defendants with per se unrelated, although similar crimes, without allegation of conspiracy or concert of action, nor involvement of each with the crimes of the other, and subsequent joint trial of said misjoined defendants, is subject to collateral attack as being violative of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States without regard to an affirmative showing of prejudice beyond what may be logically inferred from the nature of the proceedings.

2. Whether it is a violation of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States for a state authority to proceed to trial over objection urged in an area which for two years had been infected with a hostile press campaign against the defendant, with approximately ninety seven emotionally toned articles, almost all stating or inferring defendant was a criminal, having been published.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Involved herein is that part of the Fourteenth Amendment to the Federal Constitution which provides that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The statutory authority of the Federal Courts to grant habeas corpus is contained in Title 28 U.S.C. 2241 as follows:

> "(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
>
> • • • •

(c) The writ of habeas corpus shall not extend to a prisoner unless—

• • • •

(3) He is in custody in violation of the Constitution or laws or treaties of the United States;"

STATEMENT

Harlan Blackburn, Petitioner, had been convicted of violating the lottery laws of Florida on December 19, 1953. (TR. 1687; the transcript of the proceedings in the original Florida state trial was filed in the instant proceedings and made a part thereof; this transcript has been separately certified to this Court. In this Petition, references to it are denominated "TR"; references to the record in the court below are denominated "R"). The Supreme Court of Florida affirmed the conviction and sentence of Petitioner (App. B., 83 So. 2d 694), and after rehearing was denied (TR. 1793-94), a petition for a writ of Certiorari was filed in this Court, and subsequently denied (350 U. S. 987). On March 23, 1956, Petitioner began execution of the judgment and sentence of the state court. Thereafter, he filed his petition for a writ of habeas corpus in the United States District Court, Southern District of Florida, Jacksonville Division (R. 1-10) invoking its jurisdiction under 28 U.S.C. §2241. On March 11, 1957, after argument and the filing of briefs, but without taking additional testimony, the District Court entered its Order Granting Writ of Habeas Corpus and Writ of Habeas Corpus, returnable on March 14, 1957 (R. 16-18). On that latter date, final judgment releasing Petitioner from

custody was entered. (R. 23-24). An appeal was taken by the custodian of the Florida state prison, Respondent herein, to the United States Court of Appeals for the Fifth Circuit which reversed the District Court (App. A).

Petitioner asserted violation of his rights to a fair trial, predicated on a fair charge, in his application for habeas corpus (R. 1-10; all constitutional questions were explicitly raised in the application and passed on below.) The information which commenced the continuous violation of his rights under the Fourteenth Amendment is set out in Appendix C. Petitioner contends that misjoinder of defendants and offenses as set out in this charging document and subsequent trial of all together, violated due process and equal protection of the laws. Petitioner had raised these points at the trial stage by his motion to quash the indictment (TR. 58) and for severance (TR. 159); the federal questions were pressed before the Supreme Court of Florida (TR. 1721-22; 1782-86), and throughout as to both the misjoinder and venue (adverse publicity) points.

The second manner of deprivation of a fair trial occurred in trying petitioner in an area in which the jurors were "extremely likely to be impregnated by the environing atmosphere."[1] (R. 2-3; 8-9).

Between October 10, 1951, and September 30, 1953, approximately ninety seven different newspaper articles had been published about Petitioner in papers with wide circulation in Polk County, Florida. Ten of these articles called appellee "Kingpin" or "Brains of Lottery Gang;" 12 named him as "Kingpin of Rackets;" 13 described him

[1] *Frank v. Mangum*, 237 U.S. 309, 345, 349 (1915).

as "Notorious Kingpin of Gambling Rackets;" 9 called him "Orlando Racketeer;" 13 called him "Bolita Kingpin;" called him "Head Man of Ring;" 3 called him "Boss of Three-County Ring;" 3 the "Head of Operations;" and others "Bolita Chieftain"; and 2 called him "Gambling Overlord."

Similar appellations were applied at least once and as shown by Exhibit "A" to appellee's Motion for Change of Venue (TR. 166) it was widely published in the press that appellee had caused the assassination of three men one almost on the very eve of the trial.

The verified venue motion alleged that the populace of Polk County had been saturated with a campaign depicting Harlan Blackburn, Petitioner, as a dangerous criminal preying upon the working people of Polk County through the operation of one of the most diabolical gangs infesting society (the Mafia), causing him to be regarded by the populace as something loathsome, rendering him "so odious to the inhabitants of said Polk County that it would be a matter of impossibility for him to receive a fair and impartial trial in said County." (TR. 169-177).

Petitioner's motion also averred that he and the charges against him had been made a political football in the race for sheriff of Polk County, and that a candidate generated and caused talk and gossip all over Polk County, although without basis in fact, that Petitioner was friendly with one of the candidates for said office and that Petitioner was a dangerous criminal. These charges became the subject of talks before some civic organizations. (TR. Vol. 1, pp. 167-168).

None of these facts was denied by the prosecution (TR. 178-181), which only rebutted another ground not here relied upon and asserted as a conclusion of law that the facts did not preclude a fair trial. This verified and non-traversed evidence was all that the district court or the Fifth Circuit had before it as to the press campaign.

On voir dire, it became apparent that a large number of jurors were acquainted with the case. Twenty-six prospective jurors were excused for having fixed opinions. (TR. Vol. II, pp. 210, 231-2, 233, 235, 238, 239, 281, 296, 304, 305, 306, 320, 322, 328, 348, 352, 354, 356, 399, 409, 410, 411, 413, 414 and 417). After Petitioner exhausted his peremptory challenges he again unsuccessfully moved for a change of venue. (TR. 439). Each of the six chosen jurors had previous knowledge, in the environing atmosphere of the case (TR. 387, 395, 360, 418, 415, 419, 417).

REASONS FOR GRANTING THE WRIT

At the outset, it would be well to delimit the nature of the first question presented and the thesis here urged. Petitioner does not challenge the *sufficiency* of the indictment, nor does he contend that it contains multiple misjoined offenses that he alone committed. Rather the fundamental constitutional violation goes to the issue of misjoined defendants (and, pari passu, the offenses these defendants committed), and what has become known in other contexts as "guilt by association" and other evils attendant on such misjoinder.

1. Procedural due process is not merely a matter of reaching a right result; in addition the manner of reaching that result must be fair. *Snyder v. Massachusetts*, 291

U. S. 97 (1934). In adopting as it did, a test of "fundamental fairness", which in terms of the facts of this case meant that Petitioner had to demonstrate active prejudice apart from the per se misjoinder of the charging document and the attendant consequences of a joint trial, the decision below conflicts in principle with the broad standard of the *Snyder* case.[2]

The first count of the information under which Petitioner was brought to trial (Appendix C infra) jointly charges Petitioner and others with operating a lottery in five counties.[3] In the same count others (Frank Duskin, Geraldine Berry) are separately and distinctly charged with operating a lottery in four and two counties respectively without allegation of conspiracy or connection in any way between Duskin, Berry or Petitioner. In the second count, charging a different method of violating the same statute, seventeen new defendants appeared and the same misjoinder occurred. The same defects permeate counts three, four and five.

This charging document should be held to be per se violative of due process. Cf. *McElroy v. United States*, 164 U. S. 76 (1896); *Houchins v. State*, 154 Fla. 283, 17 So. 2d 82 (1944). Conceding arguendo that the trial, as the opinion below noted, may have revealed one lottery operation with Petitioner at its head, nevertheless due process for purposes of collateral attack or otherwise does not demand "proof" of prejudice, and the Fifth Circuit in looking to the evidence adduced at the trial to negative

[2]That a conflict in principle along narrower lines with other holdings of this Court and other federal courts exists will be alluded to infra under point two.

[3]No complaint is here made or has been made as to those jointly charged with Petitioner.

the existence of prejudice was in error. Furthermore, the curious reasoning that because petitioner had previously been tried in a conspiracy trial, he knew from the evidence there introduced what the State claimed to be the connecting links between the various offenses and the several offenders is an erroneous departure from procedural due process. What the Fifth Circuit did in essence is adopt an after the fact or "right result" test in demanding proof of active prejudice, and reasoning as it did.

In this sense this case raises a broad philosophical question with respect to charging documents and the Fourteenth Amendment which this Court should resolve. Procedural due process is not a matter of rightness of results, but of results rightly reached. The entire concept of the extrinsic evidence formula as applied to challenged indictments or informations is violative of this thesis; nor is the Fifth Circuit alone in these pronouncements, e.g., *Sepulveda v. Squier*, 192 F. 2d 796 (9th Cir. 1951). In Negro exclusion grand jury cases, this Court never inquires as to whether the defendant was "prejudiced" or whether the result might have differed with another proper grand jury, e.g., *Carter v. Texas*, 177 U. S. 442 (1900); see *Ballard v. United States*, 329 U. S. 187 (1946).[4] Where a coerced confession is admitted, the inquiry as to whether the evidence, however substantial, supports the conviction is immaterial, e.g., *Malinski v. New York*, 324 U. S. 401 (1945); *Cranor v. Gonzales* 226 F. 2d 83 (9th Cir. 1955); *cert. den.* 350 U. S. 935 (1956). Even under the less rigorous but increasingly similar standards of the Fourteenth Amendment as applied to state criminal procedure as contrasted with federal trial standards, some

[4] "[R]eversible error does not depend on a showing of prejudice in an individual case." 329 U. S. 185, 195 (Exclusion of women).

denials of the right to counsel result in the conviction being vitiated, e.g. *Powell v. Alabama*, 287 U. S. 45 (1932), and some tainted evidence must be excluded, e.g., *Rochin v. California*, 342 U. S. 165 (1952). Why should an egregiously faulty indictment, as in this case, differ? Petitioner does not contend that all charging documents containing an element of misjoinder are violative of due process but certainly some of them, together with subsequent joint trial of all misjoined defendants, result in a violation of due process. The implication of the inquiry along these lines is important, and this case offers appropriate facts for this Court to offer its reasoning thereon.

Nor is prejudice lacking. Petitioner had to prepare not for one trial but for twenty two trials, a burden which is highly material. See *Kotteakos v. U. S.*, 328 U. S. 750, 767 (1956).[5] Challenges to the jury were affected and the jury was necessarily distracted by the multiple joinder and trial thereon, *McElroy v. United States*, supra. Finally, guilt was bound to spill over by association with others misjoined and tried together. If the state prosecutor could join, without allegation of connection in any way, the Petitioner and others misjoined below, and Petitioner must prove prejudice, state prosecutors can act with impunity from federal review and join any unrelated crimes and defendants regardless of how one crime and defendant might affect the other.

Apart from the material prejudice that is inherent in this case, two other considerations gravitate toward non-application of a formula requiring an affirmative showing

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[5] "Numbers are vitally important in trial, especially in criminal matters. Guilt with us remains individual and personal, even as respects conspiracies. It is not a matter of mass application." 338 U. S. 750, 772.

of prejudice. How is prejudice proved? The difficulty of this task, see e.g. *Kuykendall v. Hunter*, 187 F. 2d 545 (10th Cir. 1951), is perhaps a consideration in cases such as the Negro exclusion instances discussed above. And the salutary prophylactic effect of a reasonably rigid standard in this area is apparent. Hypertechnicality is not here involved; prevention of gross but non-extrinsically demonstrable abuse is. This Court should decide this question which is doubly important in terms of its implications for the meaning of due process, and in terms of the thousands of prosecutions potentially affected.

2. The conflict with the due process ramifications of the *Snyder* case has already been alluded to above. Additionally, the decision below conflicts with the principles not of due process but certainly of due process implications, enunciated as to federal criminal procedure in *Kotteakos v. U. S.*, supra, *McElroy v. U. S.*, supra, and *Kidwell v. U. S.*, 38 App. D. C. 566 (Two unconnected charges of rape cannot be joined). The *Kotteakos* case involved proof of multi-conspiracies on an indictment for a single conspiracy, and *McElroy* was a multi-joinder of parties for theft and arson. The *Kotteakos* case, the most recent expression of this Court as to joinder in charging documents, is possibly widely misunderstood by the lower federal courts when compared with *Berger v. U. S.*, 295 U. S. 78 (1935), see, e.g., *Haakinson v. U. S.*, 238 F. 2d 775, 782 (8th Cir. 1956). The lines of demarcation between *Kotteakos* and *Berger* are not clear and amplification, which this case could afford, would be useful. The principles of the *Kotteakos* case, Petitioner urges, are at violence with the opinion below.

Moreover, *Kotteakos* raises another factor that also

has relation to the discussion under the first of the reasons above. Mr. Justice Rutledge there traced the history of the movement against hypertechnicality in criminal procedure and the consequent reform. 338 U. S. at 758 ff. It is now time to ask the question—should not the pendulum be shifted back slightly? *Kuykendall v. Hunter*, supra,[6] appears to be an illustration of the need for some retreat from the extreme entrinsic evidence formula that has arisen out of the standard that obtains in this area. This case similarly, in its requirement that prejudice affirmatively appear, raises the same considerations. Yet, while no inferences are indulged by the Fifth or Tenth Circuits in favor of the defendant, though warranted by the facts, the Ninth Circuit has seen fit to infer against the interests of the defendant, and on a logical basis certainly no more compelling than that rejected by the other two circuits, that the mere fact that a jury convicted on some counts, acquitted on others and disagreed on still others, demonstrates that there was *no* prejudicial misjoinder. *Haakinson v. U. S.*, supra at 782. This need for clarification and redress of an unfair balance emphasizes the importance of the federal question presented and colors the conflict in principle asserted.

3. Trial by newspaper and other media of mass communication is a problem increasingly occupying the attention of the courts and legal commentators. E.g. *U. S. v. Handy*, 351 U. S. 454 (1956); Note, *Controlling Press and Radio Influence on Trials*, 63 Harv. L. Rev. 840 (1950).

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[6]The defendant in this case was charged with four unconnected rapes and wartime desertion. The court's insistence that prejudice must "affirmatively appear," as in the instant case, is a striking illustration of the danger of the extrinsic evidence test. Although a military conviction was reviewed, the court did not use the standards later formulated in *Burns v. Wilson*, 346 U. S. 137 (1953).

This case presents for this Court's consideration the important federal question of whether on the facts, a fair trial was denied Petitioner because of a failure to grant a change of venue, thereby depriving him of his rights under the Fourteenth Amendment to the Federal Constitution.

The facts are set out in the Statement above. The publicity adduced as evidence of the infected opinion of Polk County, Florida, where Petitioner was tried, was confined to the newspaper accounts (TR. 166 ff.). There was, of course, much more adverse publicity. Ninety seven emotionally toned adverse newspaper reports relating to Petitioner appeared, including comment that Petitioner had caused three men to be assassinated. The press was "out to get" Harlan Blackburn.

The effect of this deluge is a legal question; the "basic facts" are undisputed. E.g. *Leyra v. Denno*, 347 U. S. 556 (1954); *Brown v. Allen*, 344 U. S. 443, 488, 506 (1953). The trial judge was, as the opinion below noted, in a better position to judge this effect than any subsequent judicial authority. But a two year virulent press campaign, as a matter of law, must have precluded a fair trial, and blind adherence to the thesis than the judge on the scene can best tell the effect of such a campaign can only result in subversion of the fair trial principle.

Procedurally also, this case presents an appropriate congeries of circumstances for the exercise of this Court's discretion. Motion for change of venue was seasonably made before the voir dire examination (TR. 166 ff.). Compare the *Handy* case where trial counsel's failure to raise the point until well after the trial was deemed "significant"

351 U. S. 454, 463. This motion was renewed after the jury was chosen (TR. 439). Peremptory challenges were exhausted. Compare *Handy* where half these challenges remained, Ibid. Moreover, each of the jurors had "heard" of the case in some way (TR. 387, 395; 360; 418; 415; 419; 417). This state of affairs, with the emotionally toned labels of the newspaper accounts, created an atmosphere inimical to a fair trial. The emotional appeal of the publicity and the complete absence of counterpropaganda created a situation where the evidence—founded on logic, not emotion—was subordinate. See Note, *Controlling Press and Radio Influence on Trials*, 63 Harv. L. Rev. 840, 842 (1950).[7]

This Court has expressed itself only infrequently concerning trial by newspaper, e.g. *Handy*; *Stroble v. California*, 343 U. S. 181 (1952). The lines need amplification, and the denial of due process that obtains in this case affords an opportunity for further guidance on a federal question of continuing and increasing importance.

4. Three separate motions, to quash the indictment, for severance, and for a change of venue, were denied by the trial court. The substantive effect of these denials was to permit misjoinder of defendants, a joint trial, and trial in a county saturated with adverse publicity. Even if it be assumed, arguendo, that none of these circumstances in itself resulted in a deprivation of due process and equal protection of the laws under the federal constitution, the concatenation of these factors certainly had such an effect.

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[7] Non-rational approaches to the influencing of important decisions are becoming insidiously more frequent and beguiling. Packard, *The Hidden Persuaders*, (1957).

This case, therefore, raises the important issue of how (arguendo) merely marginal errors, singly, may, in combination, result in a gross violation of federal constitutional rights, and affords this Court an opportunity for considered examination of this problem. Cf., e.g., *Chambers v. Florida*, 309 U. S. 227 (1940).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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PROOF OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was mailed this 12th day of March, 1958, to Richard W. Erwin, Attorney-General of the State of Florida, Attorney for Respondent, at his offices in Tallahassee, Florida.

Claude Pepper

CLAUDE PEPPER

APPENDIX A

OPINION BELOW

In The United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16681

NATHAN MAYO, as Custodian of the State Prison, State of Florida,

Appellant,

versus

HARLAN BLACKBURN,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(December 30, 1957.)

Before RIVES, TUTTLE and BROWN, Circuit Judges.

RIVES, Circuit Judge: This appeal is from a final judgment in a habeas corpus proceeding releasing and discharging from custody a State prisoner. Upon the record of the trial in the state court, and without taking any other testimony, the district court found

> "that in the denial of his motion to quash the information, in the denial of his motion for change of venue, and in the denial of his motion for severance by the Criminal (Court) of record for Polk County, Florida, the petitioner was denied due process of law and equal protection of the law under the Fourteenth Amendment to the Constitution of the United States."[1]

As has been stated, no testimony was offered before the district court, but its judgment was based upon the petition for habeas corpus and respondent's return to the writ and the exhibits thereto. Those exhibits include the original record and the trial proceedings in the Criminal Court of Record for Polk County, Florida, wherein the appellee was convicted, contained in ten volumes of more than 1800 legal size typewritten pages, "Exhibit A" to the motion for change of venue filed in evidence at the hearing of said motion showing photostatic copies of newspaper articles, and other original exhibits. Appellee's conviction had been affirmed by the Supreme Court of Florida, *Blackburn v. State*, 83 So. 2d. 694, and the United States Supreme Court had denied certiorari, *Blackburn v. Florida*, 350 U.S. 987.

Prior to the conviction upon which he is now imprisoned, appellee had been convicted in the same state court of conspiracy to violate the lottery laws of the state, and had been sentenced to pay a $500.00 fine and to im-

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1 The record contains no more detailed findings of fact or conclusions of law to sustain this general finding. In fairness to the district court, however, it should be pointed out that its attention was directed by the appellant primarily to the defense that the appellee had not exhausted his state remedies, and that in view of the decision in Brown v. Allen, 344 U.S. 443, that defense has been abandoned on appeal.

prisonment in the county jail for one year. Thereafter, the same lottery transactions were made the subject of a six count information against the appellee and twenty-three other defendants charging them with the commission of various substantive offenses under the lottery laws of Florida. Prior to appellee's trial, a number of his co-defendants had been eliminated, so that he was actually tried along with seven co-defendants on five of the six counts.

The question is presented as to whether there was such improper joinder that the appellee was denied due process of law when neither his motion to quash the information nor his motion for severance was sustained. It may be conceded, as the appellee so strenuously argues, that from the face of the information alone it would appear that distinct and separate offenses, committed in several counties, were charged against different persons, and that the information itself shows no connection between the several offenses nor between the various co-defendants. So far as those objections go to the propriety of the information as a pleading, this Court is concluded by the decision of the Supreme Court of Florida, subject to review under the due process clause only if it resulted in the denial to the appellee of fundamental fairness.[2] The appellee doubtless knew from the evidence theretofore introduced in the conspiracy trial what the state claimed to be the connecting links between the various offenses and the several offenders. The state's evidence upon the trial of the defendant and his co-defendants for

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2 Dimmick v. Tompkins, 1904, 194 U.S. 540, 552; Kepner v. United States, 1904, 195 U.S. 100; Knewel v. Egan, 1925, 268 U.S. 442; Snyder v. Massachusetts, 1934, 291 U.S. 97; Palko v. Connecticutt, 1937, 302 U.S. 319; Betts v. Brady, 1942, 316 U.S. 455.

the several substantive offenses clearly went to prove that there was but one vast lottery operation, covering several counties, operated, backed and banked by the appellee. No further discussion is needed to demonstrate that there was no such misjoinder of parties or of offenses as to amount to a denial of due process of law or equal protection of the laws.

As to the motion for change of venue, we repeat that no evidence was offered before the district court which had not already received the consideration of the trial court and of the Supreme Court of Florida. The trial court entered an order denying the motion for change of venue, stating sound reasons for such denial, and carefully providing for its reconsideration in the event of difficulty in selecting a fair and impartial jury.[3]

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[3] "The application for a change of venue filed herein on behalf of the defendant, Harlan Blackburn, coming on before the Court for hearing on the application as filed and the exhibits and affidavits made a part thereof and the response thereto filed by the State together with the supporting affidavits attached to and made a part of said response; and counsel for the defendant and for the State having announced that they had no further testimony to offer and were submitting the issue on the application and response; and the Court having taken the matter under advisement and having carefully considered the affidavits and exhibits filed herein, finds:

"That during the month of March, 1953, the defendant, Harlan Blackburn, was before this Court in Case No. 14960 under an information containing several counts, the first count being one of conspiracy and the other counts charging a violation of the lottery laws by various manners and means; that this case consumed 9 days in the trial thereof and during the course of the trial it was discovered that all of the counts charging a violation of the lottery laws were void and were withdrawn from the consideration of the Court at that time and the trial thereafter proceeded on the conspiracy count; that the present case is based on the same set of circumstances which gave rise to the bolita counts in the previous case and that practically the identical testimony used by the State in the conspiracy charge will be used in this case; that most of the newspaper articles referred to in the application for change of venue had already been published at the time the jury was selected in the conspiracy case and that no difficulty was experienced whatsoever in the securing of a jury in that case, accepted by the defendant as being without bias or prejudice and that the Court does not now therefore anticipate that there will be any difficulty when

The prospective jurors were examined at length on voir dire and twenty-six of them were excused as having fixed opinions. The six jurors finally selected had read of the case and heard it discussed but testified on voir dire that they had no fixed opinions and that they would give the defendants a fair and impartial trial. There was no unusual difficulty in choosing the jury. When the appellee renewed his motion for change of venue after the jury had been chosen and before it was sworn, the trial court ruled: "The Court is not of the opinion there has been any showing made here that it would be impossible for the defendant to secure a fair and impartial trial in this County, and the motion, therefore, is denied."

The Supreme Court of Florida attached little importance to the motion for change of venue, or for that matter to the motion to quash the information or the motion for severance, and disposed of all three in one sentence concluding its opinion:

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the jury is selected for the trial of the instant case in the securing of six jurors who will be absolutely unbiased, without prejudice and fair and impartial as between the rights of the defendant and the State of Florida.

"The Court further finds that no showing is made on the records as now submitted such as would justify the conclusion that a fair and impartial jury can not be secured in Polk County, Florida, for the trial of the issues involved herein.

"IT IS THEREFORE ORDERED that the application of the defendant, Harlan Blackburn, for a change of venue, be, and it is hereby denied, and it is further provided that if it should appear to the Court during the selection of a jury herein that it is not possible to secure a jury for the trial of this cause who stands unbiased and unprejudiced and absolutely qualified to sit as jurors therein, and that a change of venue would serve the ends of justice that the Court will at that time give due consideration to any motion for a change of venue.

"DONE AND ORDERED at Bartow, Florida, this the 30th day of October, 1953.

(S) R. H. Amidon
Judge"

> "We have considered all other assignments of error and are not persuaded that the trial court committed reversible error in entering the judgment and sentence appealed from."

Blackburn v. State, Fla. 83 So. 2d. 694, 696.

Whether the adverse publicity prevented the appellee from securing a fair trial was a question primarily addressed to the judgment of the trial court. There was more than substantial evidence to support its decision. It properly accorded weight to the examination of the jurors on voir dire and to the lack of difficulty in choosing a jury. 22 C.J.S., Criminal Law, § 196 b, pp. 312, 313. It was on the ground at the time of trial; it saw and heard the voir dire examination of the jurors; it was in much better position to know the local sentiment and to hear and decide the motion for change of venue than was the federal district court.

The trial judge and the State Supreme Court Justices all acted pursuant to their oaths to support the Constitution of the United States. Article VI, Clause 3 of the Constitution. The state courts "are under the same duty as the federal courts to respect rights under the United States Constitution." *Brown v. Allen*, 344 U.S. 443, 449. The careful inquiry evidenced by this record does not, in our opinion, present such an extreme case as might justify a federal court in holding that the state trial court and Supreme Court have denied the appellee due process of law or any other constitutional right. See *Shepherd v. Florida*, 341 U.S. 50.

The judgment of the district court is therefore re-

versed with direction to enter judgment for the respondent. 28 U.S.C.A. §2106.

REVERSED WITH DIRECTIONS.

A true copy

Test: EDWARD W. WADSWORTH

(Circuit Court Seal)

Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

JUDGMENT

Extract from the Minutes of December 30, 1957.

No. 16681

NATHAN MAYO, as Custodian of the State Prison, State of Florida

versus

HARLAN BLACKBURN

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed with direction to enter judgment for the respondent, Nathan Mayo, as Custodian of the State Prison, State of Florida;

It is further ordered and adjudged that the appellee, Harlan Blackburn be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

APPENDIX B

Opinion and Judgment of the Supreme Court of Florida

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1955

SPECIAL DIVISION A.

Harlan Blackburn, Appellant, -vs- State of Florida, Appellee.	Case No. 26,218
Lawrence Wall and Sing Wall, Appellants, -vs- State of Florida, Appellee.	Case No. 26,219
Phillip Lino, Douglas Troutman, and Hattie Eads, Appellants, -vs- State of Florida, Appellee.	Case No. 26,220

Opinion filed June 3, 1955

Appeals from the Criminal Court of Record for Polk County, R. H. Amidon, Judge

John R. Parkhill, Whitaker Brothers, Mark R. Hawes and Sam E. Murrell, Sr., for Appellants

Richard W. Ervin, Attorney General, and Bart L. Cohen, Assistant Attorney General, for Appellee.
SEBRING, J.:

Harlan Blackburn and certain other defendants were tried in the Criminal Court of Record of Polk County, Florida, for a violation of the criminal laws. The information upon which the prosecution was based charged the defendants in five separate counts with (1) conspiracy to violate the lottery laws, (2) promoting a lottery, (3) aiding and assisting in the promotion of a lottery, (4) possession of lottery paraphernalia, and (5) selling and offering lottery tickets for sale. During the course of the trial the court withdrew from the consideration of the jury counts 2 to 5, inclusive, and submitted to the jury count 1 charging conspiracy to violate the lottery laws. The jury found Blackburn guilty on the conspiracy count and the court adjudged the defendant guilty on said count and sentenced him to a $500 fine and imprisonment in the county jail for a period of one year.

Subsequently, the county solicitor of Polk County filed a six-count information against Blackburn and certain other defendants, in which Blackburn was charged with (1) promoting a lottery, (2) assisting in setting up a lottery, (3) possession of lottery paraphernalia, (4) sale of lottery tickets, (5) transmitting lottery tickets, and (6) attempting to operate a lottery. Blackburn moved to quash the information on the ground, among others, that the conspiracy count upon which he had previously been convicted related to the identical lottery transaction charged in the second information and that consequently the State was barred, under principles of "former jeopardy and . . . res adjudicata,"

from prosecuting the defendant for the crimes charged in the second information. The trial court denied the motion to quash and the cause proceeded to trial on the merits. The jury found the defendant guilty on each count of the information, the trial court pronounced judgment and imposed sentence, and this appeal followed.

The main question on the appeal is whether or not the trial court committed reversible error in refusing to grant the motion to quash on the ground of former jeopardy.

The law is uniform and well established that "punishment for a conspiracy to commit a crime and for the overt act which is the object of the conspiracy does not constitute double punishment," or double jeopardy, even where the substantive offense is the overt act involved in the conspiracy charge. 15 Am. Jur., Criminal Law, section 385, p. 60, 1954 supp., p. 13; 22 C. J. S. 432; anno. 92 L. Ed. 198; U. S. v. Wexler, 79 F. 2d 528; Pinkerton v. U. S., 328 U. S. 640, 66 S. Ct. 1180. The rule rests on the principle that the commission of a substantive crime and a conspiracy to commit the substantive crime are separate and distinct offenses. Brown v. State, 130 Fla. 479, 178 So. 153.

In support of his position that the prosecution under the second information was barred by reason of the former trial and conviction, the appellant cites Williams v. State (Fla.), 69 So. 2d 766, and its companion, Young v. State (Fla.), 69 So. 2d 761, which, he contends, squarely hold that conspiracy to violate the lottery laws is not an independent substantive offense for which a defendant may be prosecuted and punished separately.

In Williams v. State the defendant Williams was tried and convicted in the Criminal Court of Record of Polk County of certain criminal offenses charged in a six-count information. One count charged the defendant with conspiracy to violate the lottery laws. Section 833.01, Florida Statutes 1951. Two counts charged the defendant with the commission of certain felonies under the lottery law. Section 849.09, subsections 1 (a) and (b), Florida Statutes 1951. The remaining counts charged the defendant with the commission of certain misdemeanors under the lotttery laws. Section 849.09, subsections 1 (g) and (h), Florida Statutes 1951.

On the appeal to this court from the judgment and sentence the holding of this Court was two-fold: (1) "Where a defendant is convicted *under the lottery laws*, section 849.09, F. S., . . . on two or more counts involving both misdemeanors and felonies, only one sentence is applicable" (emphasis supplied); (2) though the Supreme Court of Florida has jurisdiction to review felony convictions, by reason of the provisions contained in section 5, Article V, of the Constitution, it has no power to review misdemeanor convictions, this power being vested in the circuit courts under the provisions of section 11, Article V, of the Constitution; therefore this Court was without jurisdiction to deal with the judgment and sentence appealed from, so far as it pertained to the misdemeanor charges contained in the information "except to order a proper judgment or sentence by reason of the fact that misdemeanors and felonies are charged in different counts of the same information charging variations of only one offense." Nowhere in the opinion was there an adjudication that the count for *conspiracy* to violate the lottery laws, which is an offense only because of the existence of

the general conspiracy statute, section 833.01, Florida Statutes 1951, was regarded by this Court as stating a variation of the substantive lottery violation charged in the other counts of the information, which were punishable only under section 849.09, Florida Statutes 1951.

Under these circumstances, we think it clear that the Williams case cannot be construed as negating or overruling the principle established by an earlier decision of this Court, to the effect that as a general rule a prosecution under the statutes penalizing a conspiracy to violate certain criminal laws of the state constitutes a charge of an independent offense and not merely a variation of the substantive offense which the defendant conspired to commit. Brown v State, supra.

While it must be conceded that certain language of the opinion in the companion case of Young v. State, supra, tends, at first reading, to sustain appellants' position, such as, for example, the blanket statement that "the information in this case was with reference to *the same criminal transactions*," it seems clear from a careful consideration of these comments in context that the conspiracy charge was not under consideration at that point of the opinion, as is evidenced by succeeding references in the opinion to the various counts in question as charging commission of acts "embraced within the alternative provisions of the (lottery) statute." p. 762, 763. (Emphasis supplied) And the Court was necessarily governed, in its final conclusions as to the validity of the judgment and sentence before it for review, by the principles of the limited scope of review acknowledged in the Williams case, supra, since the issues involved in the two appeals were precisely the same.

We have considered all other assignments of error and are not persuaded that the trial court committed reversible error in entering the judgment and sentence appealed from.

Affirmed.

DREW, C. J., TERRELL, J., and FLOYD, Associate Justice, CONCUR.

IN THE SUPREME COURT OF FLORIDA:

I, GUYTE P. McCORD, Clerk of the Supreme Court of Florida, do hereby certify that the above and foregoing pages numbered from 1 to 5 inclusive, constitute a true and correct copy of the Opinion and Judgment of the Supreme Court of Florida filed June 3rd, 1955, in that certain cause recently pending in said Court wherein Harlan Blackburn was Appellant and The State of Florida was Appellee, all as the same appears among the records and files of my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Supreme Court of Florida, at Tallahassee, the capital, on this the 3rd day of November, 1955.

/s/ GUYTE P. McCORD
Clerk of the Supreme Court of Florida.

APPENDIX C

The Charging Document On Which Petitioner Was Tried

"In the name and by Authority of the State of Florida: —

CLIFTON M. KELLY, County Solicitor for the County of Polk, prosecuting for the State of Florida in said County, under oath, information makes that HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL on the 1st day of April, A. D., 1952, and at divers other times between the 1st day of April, A. D., 1952, and the 22nd day of September, A. D., 1952, did in Polk County, Florida, unlawfully set up, promote and conduct a lotttery for money which said lottery is commonly known as Cuba and bolita; that said offense was committed at the said time by HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL partly in Osceola County, Florida, Orange County, Florida, Hillsborough County, Florida, and DeSoto County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that FRANK DUSKIN on the 1st day of April, A. D., 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully set up, promote and conduct a lottery for money, which said lottery is

commonly known as Cuba and Bolita; that said offense was committed at said time by FRANK DUSKIN partly in Osceola County, Florida, Orange County, Florida, and Hillsborough County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that GERALDINE BERRY on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D., 1952, and the 22nd day of September, A. D. 1952, did in Polk County, Florida, unlawfully set up, promote and conduct a lottery for money which said lottery is commonly known as Cuba and Bolita; that said offense was committed at said time by GERALDINE BERRY partly in Hillsborough County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida;

COUNT 2

CLIFTON M. KELLY, County Solicitor for the County of Polk, prosecuting for the State of Florida in the said County, under oath, further charges that HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did in Polk County, Florida, unlawfully aid and assist in the setting up and promoting and conducting a lottery for money, which said lottery is commonly known as Cuba and bolita, and the said HAR-

LAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL were interested in and connected with the said lotttery, which said lottery is commonly known as bolita and Cuba; that said offense was committed at said time by HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL partly in Osceola County, Florida, Orange County, Florida, Hillsborough County, Florida and DeSoto County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that FRANK DUSKIN on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully aid and assist in the setting up and promoting and conducting of a lottery for money, which said lottery is commonly known as Cuba and bolita, and the said FRANK DUSKIN was interested in and connected with the said lottery, which said lottery is commonly known as bolita and Cuba; that said offense was committed at said time by FRANK DUSKIN partly in Osceola County, Florida, Hillsborough County, Florida and Orange County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that ELOUISE BROADNAX, HATTIE EADS, LAURA MERRITT, ELIZABETH ROBERTS, MAYZENE BROWN, AGNES HESTER BRUNDRIDGE, ELOUISE

MILLER, IRA MILLER also known as ERA MILLER also known as IVERY MILLER, ARTHUR WILLIAMS, JESSIE MAE GOLDWIRE, ANNIE MAE ROBINSON, DOUGLAS TROUTMAN, WALLACE WILSON, M. D. LEE, JOHN HENRY SPEED and PHILIP LINO on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did in Polk County, Florida, unlawfully aid and assist in the setting up and promoting and conducting of a lottery for money, which said lottery is commonly known as Cuba and bolita, and the said ELOUISE BROADNAX, HATTIE EADS, LAURA MERRITT, ELIZABETH ROBERTS, MAYZENE BROWN, AGNES HESTER BRUNDADGE, ELOUISE MILLER, IRA MILLER also known as ERA MILLER also known as IVERY MILLER, ARTHUR WILLIAMS, JESSIE MAE GOLDWIRE, ANNIE MAE ROBINSON, DOUGLAS TROUTMAN, WALLACE WILSON, M. D. LEE, JOHN HENRY SPEED and PHILIP LINO were interested in and connected with the said lottery, which said lottery is commonly known as bolita and Cuba, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that GERALDINE BERRY and SAM CAGNINA on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully aid and assist in the setting up and promoting and conducting of a lottery for money, which said lottery is commonly known as Cuba and bolita, and the said GERALDINE BERRY and SAM CAGNINA were interested in and connected with the said lottery, which said lottery is commonly known as bolita and Cuba; that said offense was committed at

the said time by the said GERALDINE BERRY and SAM CAGNINA partly in Hillsborough County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida;

COUNT 3

CLIFTON M. KELLY, County Solicitor for the County of Polk, prosecuting for the State of Florida in the said County, under oath, further charges that HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL on the 1st day of April, A. D., 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully have in their possession implements and devices for conducting a lottery for money, which said lottery is commonly known as bolita and Cuba, the said implements and devices consisting of lottery tickets, carbon copies of lottery tickets, lottery pads, check-up sheets, books and records, said implements and devices being a part of the paraphernalia for the conducting of the aforesaid lottery and the said HARLAN BLACKBURN alais THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL were then and there interested in the conducting of the aforesaid lottery and possessed said implements and devices for said purposes; that said offense was committed at said time by HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT

also known as CECIL REDDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL partly in Osceola County, Florida, Orange County, Florida, Hillsborough County, Florida and DeSoto County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that ELOUISE BROADNAX, HATTIE EADS, LAURA MERRITT, ELIZABETH ROBERTS, MAYZENE BROWN, AGNES HESTER BRUNDRIDGE, ELOUISE MILLER, IRA MILLER also known as ERA MILLER also known as IVERY MILLER, ARTHUR WILLIAMS, JESSIE MAE GOLDWIRE, ANNIE MAE ROBINSON, DOUGLAS TROUTMAN, WALLACE WILSON, M. D. LEE, JOHN HENRY SPEED and PHILIP LINO on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully have in their possession implements and devices for conducting a lottery for money, which said lottery is commonly known as bolita and Cuba, the said implements and devices consisting of lottery tickets, carbon copies of lottery tickets, lottery pads, checkup sheets, books and records, said implements and devices being a part of the paraphernalia for the conducting of the aforesaid lottery, and the said ELOUISE BROADNAX, HATTIE EADS, LAURA MERRITT, ELIZABETH ROBERTS, MAYZENE BROWN, AGNES HESTER BRUNDRIDGE, ELOUISE MILLER, IRA MILLER also known as ERA MILLER also known as IVERY MILLER, ARTHUR WILLIAMS, JESSIE MAE GOLDWIRE, ANNIE MAE ROBINSON, DOUGLAS TROUTMAN, WALLACE WILSON, M. D. LEE, JOHN HENRY

SPEED and PHILIP LINO were then and there interested in the conducting of the aforesaid lottery and possessed said implements and devices for said purposes, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that FRANK DUSKIN on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully have in his possession implements and devices for conducting a lottery for money, which said lottery is commonly known as bolita and Cuba, and said implements and devices consisting of lottery tickets, carbon copies of lottery tickets, lottery pads, check-up sheets, books and records, said implements and devices being a part of the paraphernalia for the conducting of the aforesaid lottery and the said FRANK DUSKIN was then and there interested in the conducting of the aforesaid lottery and possessed said implements and devices for said purposes; that said offense was committed at said time by FRANK DUSKIN partly in Osceola County, Florida, Orange County, Florida, and Hillsborough County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that SAM CAGNINA on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully have in his possession implements and devices for conducting a lottery for money, which said lottery is commonly known as bolita and Cuba, the said implements and devices consisting of lottery tickets, carbon copies of lottery tickets, lottery pads, check-up

sheets, books and records, said implements and devices being a part of the paraphernalia for the conducting of the aforesaid lottery, and the said SAM CAGNINA was then and there interested in the conducting of the aforesaid lottery and possessed said implements and devices for said purposes; that said offense was committed at said time by SAM CAGNINA in Hillsborough County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida;

COUNT 4

CLIFTON M. KELLY, County Solicitor for the County of Polk, prosecuting for the State of Florida in the said County, under oath, further charges that HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully sell and offer for sale tickets, coupons and shares in a lottery for money commonly known as Cuba and bolita; that said offense was committed at said time by HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL partly in Osceola County, Florida, Orange County, Florida, Hillsborough County, Florida, and DeSoto County, Florida, as well as in said Polk County, Florida, contrary to the form of

the statute in such case made and provided and against the peace and dignity of the State of Florida; and that GERALDINE BERRY on the 1st day of April, A. D. 1952 and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully sell and offer for sale tickets, coupons and shares in a lottery for money commonly known as Cuba and bolita; that said offense was committed at said time by GERALDINE BERRY partly in Hillsborough County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that ELOUISE BROADNAX, HATTIE EADS, LAURA MERRITT, ELIZABETH ROBERTS, MAYZENE BROWN, AGNES HESTER BRUNDRIDGE, ELOUISE MILLER, IRA MILLER also known as ERA MILLER also known as IVERY MILLER, ARTHUR WILLIAMS, JESSIE MAE GOLDWIRE, ANNIE MAE ROBINSON, DOUGLAS TROUTMAN, WALLACE WILSON, and M. D. LEE on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully sell and offer for sale tickets, coupons and shares in a lottery for money commonly known as Cuba and bolita, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida:

COUNT 5

CLIFTON M. KELLY, County Solicitor for the County of Polk, prosecuting for the State of Florida in

the said County, under oath, further charges that HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully transmit lottery tickets, coupons and shares in a lottery for money, commonly known as Cuba and bolita; that said offense was committed at said time by HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDDICK, NORMA BRIDGES, LAWRENCE WALL and SING WALL partly in Osceola County, Florida, Orange County, Florida, Hillsborough County, Florida, and DeSoto County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that JOHN HENRY SPEED on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully transmit lottery tickets, coupons and shares in a lottery for money, commonly known as Cuba and Bolita, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that GERALDINE BERRY on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully transmit lottery tickets, coupons and shares in a lottery for money, commonly known as Cuba and

bolita; that said offense was committed at said time by GERALDINE BERRY partly in Hillsborough County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida; and that FRANK DUSKIN on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully transmit lottery tickets, coupons and shares in a lottery for money, commonly known as Cuba and bolita; that said offense was committed at said time by FRANK DUSKIN partly in Osceola County, Florida, Orange County, Florida, and Hillsborough County, Florida, as well as in said Polk County, Florida, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida;

COUNT 6

CLIFTON M. KELLY, County Solicitor for the County of Polk, prosecuting for the State of Florida in the said County, under oath, further charges that HARLAN BLACKBURN alias THOMAS DAVIS, JOHN CECIL REDDITT also known as CECIL REDDITT also known as CECIL REDDICK on the 1st day of April, A. D. 1952, and at divers other times between the 1st day of April, A. D. 1952, and the 22nd day of September, A. D. 1952, did, in Polk County, Florida, unlawfully attempt to operate and conduct a lottery for money, which said lottery is commonly known as bolita and Cuba, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Florida."